Supreme Court, U.S.
FILED
OCT 10 1995
OFFICE OF THE CLERK

NO: 95-948

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

TERM AUTO SALES INC., EKP INC., BROOKLYN SALAGE, ERNEST BOZIKIS, KERIAKOS BOZIKIS,

Petitioners

vs.

THE CITY OF CLEVELAND, HOWARD RUDOLPH CHIEF OF POLICE

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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35 pp

QUESTION PRESENTED

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CORRECTLY APPLIED ALL OF THE STANDARDS SET FORTH IN NEW YORK V. BURGER TO DETERMINE THAT CODIFIED ORDINANCE OF THE CITY OF CLEVELAND §601.15 IS CONSTITUTIONAL.

RULE 14.1(b) LIST OF PARTIES

Petitioners:

Term Auto Sales, Incorporated
(no parent or subsidiaries)

E.K.P., Incorporated, dba Brooklyn Salvage
(no parent or subsidiaries)

Ernest Bozikis

Keriakos Bozikis

Respondents:

The City of Cleveland

Howard Rudolph, Chief of Police, Cleveland, Ohio

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its Order in this case on May 18, 1995. On June 1, 1995, the Petitioners herein filed their Petition for Rehearing. On July 12, 1995, the Petition for Rehearing was denied by the Court of Appeals.

The jurisdiction of this Honorable Court is being invoked pursuant to Title 28 of the United States Code §1254(1) that provides for review by Writ of Certiorari of all cases decided by the United States Courts of Appeals. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §1343(3) which grants jurisdiction for suits redressing violations of the federal laws that provide for the equal rights of citizens.

CONSTITUTIONAL PROVISIONS, STATUTES, TREATIES, ORDINANCES, AND REGULATIONS INVOLVED

UNITED STATES CONSTITUTION

Amendments IV, XIV ..... App. C.

UNITED STATES CODE

28 U.S.C. §1254(1) ..... App. C.

42 U.S.C. §1983 ..... App. C.

LOCAL ORDINANCES

Codified Ordinances of
the City of Cleveland §601.15 ..... App. C.

I. STATEMENT OF THE CASE

This case was brought pursuant to 42 U.S.C. §1983, 28 U.S.C. §1331 and 28 U.S.C. §1343(3) alleging, inter alia, that the Respondents violated the Petitioners' right to be free from unreasonable searches pursuant to the Fourth Amendment to the United States Constitution, as well as pursuant to the general federal question jurisdiction statute.

On July 17, 1987, the Petitioners filed their Complaint in this case in which they alleged that their civil rights were violated by the Respondents when the Respondents conducted a warrantless raid of the Petitioners business premises, seizing items that lacked certain federal certification labels or vehicle identification numbers. On May 4, 1988, The City of Cleveland and Howard Rudolph, Chief of Police filed a Motion for Summary Judgment on behalf of ten police officer Defendants. This Motion was denied by the District Court without written opinion on April 8, 1991.

An interlocutory appeal followed in which the United States Court of Appeals for the Sixth Circuit vacated the District

Court's order and remanded the case for further consideration and the issuance of an opinion. On July 28, 1992, the District Court issued a memorandum of opinion and order denying the Defendant Police Officer's Motion for Summary Judgment based on the defense of qualified immunity. The Defendant Police Officers again filed an interlocutory appeal of the District Court's order.

In a Per Curiam decision rendered on June 28, 1993, the Sixth Circuit reversed the District Court's denial of the Defendant Police Officers Motion for Summary Judgment and found that the Defendant Police Officers were entitled to assert a defense of qualified immunity.

On August 10, 1993, the District Court granted judgment in favor of all Defendants on the basis of qualified immunity.

Petitioners filed a Motion for Relief from Judgment pursuant to Fed.R.Civ.P. 60(B) in the District Court on October 12, 1993. This motion was denied on December 14, 1993. On December 20, 1993, the Petitioners filed a Motion for Reconsideration of the denial of their Motion for Relief from

Judgment. This Motion was denied by the District Court on January 18, 1993.

The Petitioners filed their Notice of Appeal on January 13, 1994. This appeal was stayed due to the Petitioners' pending Motion for Reconsideration. Following the denial by the District Court of the Motion for Reconsideration, the Appellants filed their Amended Notice of Appeal on February 16, 1994.

On May 18, 1995, the Court of Appeals ruled in favor of the Respondents. The Petitioners then filed a Request for Rehearing on June 1, 1995 that was denied on July 12, 1995.

II. ARGUMENT

I. THE COURT OF APPEALS INCORRECTLY APPLIED THE STANDARDS SET FORTH IN NEW YORK V. BURGER TO DETERMINE THAT CODIFIED ORDINANCE OF THE CITY OF CLEVELAND §601.15 IS CONSTITUTIONAL.

In it's Opinion of May 18, 1995, the United States Court of Appeals for the Sixth Circuit applied the standards set forth in New York v. Burger, 482 U.S. 689 (1987) to determine that Codified Ordinance, City of Cleveland §601.15 is constitutional.

In doing so, the Court, citing to Burger noted that there is a substantial governmental interest in regulating the vehicle dismantling industry because automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts. It then noted that authorization of warrantless searches is necessary to further the regulatory scheme in question. The Burger statute was then applied to the Cleveland Ordinance in order to reach a finding of constitutionality.

The Court erred in so doing, however, because it only addressed the time prong of the Burger test. In order to provide the constitutionally adequate substitute for a warrant required for warrantless searches of closely regulated industries, three

requirements must be met. First, there must be a substantial government interest in regulating the industry in question. Second, the warrantless inspections must be necessary to further the regulatory scheme. Burger, 480 U.S. at 702; Donovan v. Dewey, 452 U.S. 594 (1981). Finally, the statute's inspection program, in terms of the certainty and regularity of its application must provide a constitutionally adequate substitute for a warrant. Burger, 480 U.S. at 703; Donovan, 452 U.S. at 600.

In order to meet this final test, the statute must contain limitations on the time, place, and scope of the warrantless searches.

> "[T]he regulatory statute must perform the two basic functions of a warrant; it must advise the owner of the commercial premises that the search is being made pursuant to th law and has a properly defined scope, and it must limit the discretion of the inspecting officers." Burger, 480 U.S. at 703.

> "To perform this first function, the statute must be sufficiently comprehensive and defined that the owner of the commercial property cannot help but be aware that his property will be subject to periodic inspections for specific purposes." Id; Donovan, 452 U.S. at 600; Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).

Finally, the statute must carefully limit the time, place, and scope of the warrantless searches. Burger, 482 U.S. at 703; United States v. Biswell, 406 U.S. 311 (1972).

To satisfy the certainty and regularity requirement, the inspection program must define clearly what is to be searched, who can be searched, and the frequency of such searches. Bionic Auto Parts & Sales v. Fahner, 721 F.2d 1072 (7th Cir. 1983).

Even in the context of a pervasively regulated industry, the provisions allowing warrantless searches must be tailored to the states's proper objectives and must minimize the dangers inherent in the unbridled exercise of administrative discretion.

In Burger, the Court found that the automobile scrap industry is a pervasively regulated industry that is subject to warrantless administrative searches, and that such searches are necessary to further the regulatory scheme. It then upheld the New York statute that allowed warrantless searches of the automobile scrap industry. In upholding the statute, it noted that the statute in question was sufficiently narrow to provide a constitutionally adequate substitute for a warrant. The owner of

a vehicle dismantling business was informed that inspections of all such industries would be made on a regular basis; the searching official was allowed no discretion in deciding who to search. Additionally, the statute set forth who was authorized to conduct the inspection, the scope of the inspection, placed the operator of the salvage yard on notice as to how to comply with the statute and specifically delineated who was authorized to conduct an inspection under the statute. Finally, the New York statute placed careful time, place, and scope limitations on the inspections. The searches were allowed to be carried out only during regular and usual business hours, could only be made of vehicle-dismantling and related industries, and only records, vehicles, or parts of vehicles subject to certain record keeping requirements, located on the premises, were subject to warrantless searches.

Thus, in the present case, although finding that there is a substantial governmental interest in regulating the vehicle dismantling industry, and that the authorization of warrantless searches is necessary to further that regulatory scheme, the Court

of Appeals failed to properly apply the constitutional standards required of warrantless inspection schemes prior to finding the Cleveland Ordinance constitutional.

Rather than apply all of the standards set forth in Burger, the Court of Appeals looked only to the time prong of the Burger test. The Court of Appeals overlooked the fact that the Cleveland Ordinance contains no limits on the time or place of the warrantless searches, and is so broad in scope that even individuals who are not involved in the vehicle dismantling industry, including Petitioner Term Auto Sales, a car dealer, are subject to a warrantless search at the whim of the Cleveland Police. The Court of Appeals similarly failed to address that fact that the Cleveland Ordinance contains no delineation of what may be searched, who may be searched, who may search, when warrantless searches may take place, or how often warrantless searches of a particular business may be performed.

Unlike the Burger statute, the owner of a vehicle dismantling business in Cleveland, Ohio is not informed that inspections of all such industries would be made on a regular

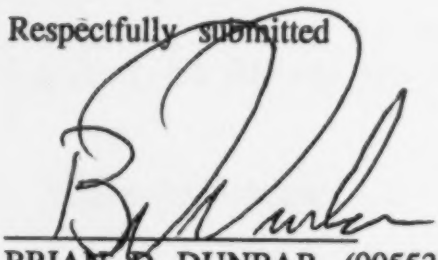
basis; the searching official was allowed broad discretion in deciding who to search; the Ordinance fails to set forth who is authorized to conduct the inspection, what the scope of the inspection may be, does not place the operator of the salvage yard on notice as to how to comply with the statute and does not specifically delineate who is authorized to conduct the inspections. Finally, the Cleveland Ordinance does not place careful time, place, and scope limitations on the inspections. The Ordinance does not require the searches to be carried out at only specific times, does not limit the searches to the vehicle-dismantling and related industries, and does not limit the searches to records, vehicles, or parts thereof.

Clearly, the United States Court of Appeals for the Sixth Circuit has decided this important federal question in a way that conflicts with prior relevant decisions of this Court. Thus, it is paramount that this Honorable Court grant this Petition for a Writ of Certiorari.

III. CONCLUSION

For all of the foregoing reasons, the Petitioners respectfully request that this Honorable Court grant the Writ of Certiorari and accept this case for review.

Respectfully submitted



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INDEX TO APPENDICES

APPENDIX A: Opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed.

May 18, 1995 Order of 6th Circuit Court of Appeals.

APPENDIX B: Any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry.

July 12, 1995 Denial of Petition for Rehearing.

APPENDIX C: Constitutional provisions, treaties, statutes, ordinances and regulations involved in the case, set out verbatim with appropriate citation.

U.S. Constitution, Amendment IV.
U.S. Constitution, Amendment XIV, Section I.
28 U.S.C. §1254(1).
42 U.S.C. §1983.
Codified Ordinance of the City of Cleveland, §601.15.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Term Auto Sales, Inc., et al.

Plaintiffs-Appellants

v.

The City of Cleveland, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Ohio, Eastern Division
Case No: C87-1825

(Hon. John M. Manos, Trial Judge)

Before: Keith, Martin, and Guy, Circuit Judges

(Argued April 3, 1995 Decided May 18, 1995)

PER CURIAM, Section 601.15 of the codified ordinances of the City of Cleveland provides for the inspection of vehicles and vehicle parts at certain enumerated location for the purpose of locating stolen motor vehicles or stolen vehicle parts. On July 21, 1986 members of the Cleveland Police Department's auto theft unit, acting pursuant to the

aforementioned ordinance, conducted a warrantless search of the premises of Term Auto Sales and Brooklyn Salvage. Both vehicles and parts suspected of being stolen were seized. Term Auto and Brooklyn Salvage were ultimately prosecuted but at the request of the county prosecutor the indictment was dismissed.

Subsequent to the dismissal of the indictment, plaintiffs instituted this action pursuant to 42 U.S.C. §1983, naming the City of Cleveland and a number of police officers as defendants. The individual defendants sought summary judgment, relying upon the defense of qualified immunity, but their motion for summary judgment was denied. In an earlier appeal to this court we ordered the case dismissed as to the defendants sued in their individual capacities based upon the doctrine of qualified immunity. Term Auto Sales, Inc. v. City of Cleveland, No. 92-3909, slip op. (6th Cir. June 28, 1993).

The case was then remanded to the district court for further proceedings. At this time the only claims left in the case were the claims against the City of Cleveland and the official capacity claim against the chief of police. Since the official

capacity claim against the chief of police is essentially a claim against the City, for all practical purposes the City of Cleveland was the only defendant on remand. Kentucky v. Graham, 473 U.S. 159 (1985); Leach v. Shelby County Sheriff, 891 F.2d 1241 (6th Cir. 1989), cert. denied, 495 U.S. 932 (1990).

The only claim involving the City of Cleveland was a facial attack on the constitutionality of Section 601.15. On remand the district judge once again granted summary judgment, holding that the City of Cleveland also benefitted from our qualified immunity decision, and, further, that the ordinance under attack was not facially unconstitutional. This timely appeal followed.

After reviewing the proceedings that occurred in the district court following remand, we conclude that the district court erroneously applied the doctrine of qualified immunity as to the City of Cleveland; however, we further hold that the district court correctly determined that the ordinance was not facially unconstitutional.

I.

It is well settled that while qualified immunity protects

officials, "the doctrine of qualified immunity is no defense to municipal corporations which may otherwise be liable for federal constitutional violations under [42 U.S.C. §1983]." Marsh v. Arn, 937 F.2d 1056, 1071 (6th Cir. 1991); see also Owen v. City of Independence, 445 U.S. 622, 638 (1980) ("there is no tradition of immunity for municipal corporations...We hold, therefore, that [a] municipality may not assert the good faith of its officers or agents as a defense to liability under §1983"); Barber v. City of Salem, 953 F.2d 232, 238 (6th Cir. 1992) ("it is possible that city officials may be entitled to qualified immunity for certain actions while the municipality may nevertheless be held liable for the same actions"). Therefore, the district court's determination that, since we had afforded qualified immunity to the individual defendants on appeal, no liability remained as to the City was erroneous. [1]

II.

The court rejected plaintiffs' allegation that the ordinance was unconstitutional on its face and therefore concluded that no

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[1] The City Concedes this point.

liability flowed from the enforcement of that ordinance. [2] Defendants contend that the district court should be affirmed because it claims that this court determined in its July 28, 1993, opinion that the ordinance is constitutional. See Defendants' br. at 8 ("This Court has already held that the ordinance that is the subject of this action is constitutional.") (Emphasis added.) Defendants' contention is in error. [3] In our earlier opinion, we merely noted that an Ohio state court of appeals had upheld the constitutionality of a prior version of the ordinance. Term Auto Sales, No. 92-3909, slip op. at 6-7 ("[p]rior to the January amendments, [expanding the scope of the ordinance to include automotive parts] Ohio courts had upheld the Cleveland ordinance against constitutional attack. State v. Zinmeister, 27

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[2] Plaintiffs do not raise a claim that the ordinance as applied was unconstitutional.

[3] Defendants further claim that in the June 28, 1993, opinion we determined that the search itself was constitutional. Defendants' br. at 8 ("[T]his court has held that the search itself, under the authority of this ordinance, was constitutional.") Again, defendants overstate the breadth of our holding in that opinion which was limited to the qualified immunity issue.

Ohio App.3d 313 (1985)"). Our decision on the merits, however, only addressed defendants' interlocutory appeal: whether the district court improperly denied the individual police officers' motion for summary judgment based on the defense of qualified immunity. Therefore we consider the facial validity of the ordinance in this appeal for the first time.

The Supreme Court has recognized that the Fourth Amendments' prohibition on unreasonable searches applies to commercial premises as well as to private homes. E.g., New York v. Burger, 442 U.S. 691, 699 (1987). This prohibition exists not only with respect to traditional police searches conducted for the gathering of criminal evidence, but also with respect to administrative inspections designed to enforce regulatory statutes. See Marshall v. Barlow's, Inc., 436 U.S. 307, 312-13 (1978); see also See v.City of Seattle, 387 U.S. 541, 546 (1967) (administrative search of commercial property generally must be supported by a warrant) ("the basic component of a reasonable search under the Fourth Amendment --that it not be enforced without a suitable warrant procedure -- is applicable...to

business...premises"). The Court has recognized that as to searches conducted of "closely regulated" industries, Burger, 482 U.S. at 700, a legislative scheme may serve as a substitute for a warrant. See Donovan v. Dewey, 452 U.S. 594, 603 (1981). The Court observed in Marshall: "Certain industries have such a history of government oversight that no reasonable expectation of privacy...could exist for a proprietor over the stock of such an enterprise." 436 U.S. at 313 (citation omitted). To date the Court has identified four such closely regulated industries: the liquor industry, Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970); the firearms industry, United States v. Biswell, 406 U.S. 311 (1972); the mining industry, Donovan, 452 U.S. at 594; and the vehicle dismantling industry, Burger, 482 U.S. at 691.

The Supreme Court in Donovan held that a legislative scheme authorizing warrantless inspection of closely regulated industries will not violate the Fourth Amendment if the following three requirements are met: (1) there is a substantial government interest underlying the regulatory scheme pursuant to which the

search is made; (2) the warrantless inspections are necessary to further the regulatory scheme; and (3) the statute's inspection program, in terms of certainty and regularity of its application, provides an adequate substitute for the warrant requirement. See 452 U.S. at 600-03. In this last regard, certainty and regularity are shown when adequate notice is provided and individual discretion by searching officers is curtailed. Burger, 482 U.S. at 703. Consistent with these requirements, the statute or ordinance authorizing the inspection must contain time, place and scope limitations. Id.

In this case, plaintiffs concede that they are involved with "closely regulated" businesses and do not questions the substantial governmental interest underlying the regulatory scheme. Thus, the first two prongs of the Donovan test are satisfied. As to the third Donovan inquiry, plaintiffs argue that the ordinance is invalid because it arguably applies to more than just "closely regulated" businesses and contains inadequate time, place and scope limitations.

The ordinance at issue reads as follows:

601.15 Inspection of Vehicles for the Purpose of Locating Stolen Motor Vehicles and/or Stolen Parts.

(a) For the purpose of locating stolen motor vehicles and/or stolen motor vehicle parts, the Chief of Police or his authorized representative may inspect any motor vehicle, as defined in Section 4501.01 of the Revised Code and may inspect any motor vehicle part that has been marked with an identifying number by the manufacturer, situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment, and may inspect the title, registration, vehicle identification number, or license plates of the vehicle in order to establish the rightful ownership or possession of the vehicle or vehicle part.

(b) For the purpose of locating a stolen vehicle, the Chief of Police, or his authorized representative, may inspect implements of husbandry and construction equipment in places described in division (a) of this section.

(c) Whenever possible, inspections conducted pursuant to division (a) or (b) of this section shall be conducted at a time and in a manner so as to minimize any interference with, or delay of business operations.

(d) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance of a police officer from inspecting any place described in division (a), shall do any act which hampers or impedes a police officer from making an inspection pursuant to this Section.

> Whoever violates this Section is guilty of obstructing vehicle inspections, a misdemeanor of the second degree.

It appears clear that a case can be made that the ordinance encompasses locations other than those under the control of a "closely regulated" business. However, since the plaintiffs concede that they are "closely regulated" businesses[4] and the ordinance is not being enforced against other than closely regulated businesses, we elect to save for another day what might be the result of an attempt to enforce the ordinance in a different context. We conclude that plaintiffs lack standing to challenge this ordinance on behalf of others not involved in a "closely regulated" business. See, e.g., Basiardanes v. City of Galveston, 682 F.2d 1203, 1210 (5th Cir. 1982) (ordinarily a litigant to whom a statute applies lacks standing to argue that the statute is vague as to others).

We turn now to the plaintiffs' "time, place and scope"

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[4] In Frisby v. Schultz, 487 U.S. 474 (1988), the Court upheld an arguably overbroad ordinance in the face of a claim of facial invalidity by holding that the ordinance has not and would not be enforced against those not properly within its purview.

argument.

In New York v. Burger, 482 U.S. 691 (1987), the Court considered whether a warrantless search of a vehicle dismantler's business, conducted pursuant to a statute authorizing such a search, fell under the exception to the warrant requirement for administrative inspections of closely regulated industries. The Court, construing the facial validity of a New York statute,[5]

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[5]The statute provides as follows:

> Records and identification. (a) Any records required by this section shall apply only to vehicles or parts of vehicles for which a certificate of title has been issued by the commissioner [of the Department of Motor Vehicles] or which would be eligible to have such a certificate of title issued. Every person required to be registered pursuant to this section shall maintain a record of all motor vehicles, trailers, and major component parts thereof, coming into his possession together with a record of the disposition of any such motor vehicle, trailer, or part thereof and shall maintain proof of ownership for any such motor vehicle, trailer or part thereof and shall maintain proof of ownership for any motor vehicle, trailer or major component part thereof while in his possession. Such records shall be maintained in a manner and for prescribed by the commissioner. The commissioner may, by regulation, exempt vehicles or major component parts of vehicles from all or a portion of the record keeping requirements based upon the age of the

found that the statute authorizing inspection of a vehicle dismantlers premises during normal business hours for purposes of reviewing inventory did not violate the Fourth Amendment. The Burger Court found that there was a substantial government interest in regulating the vehicle dismantling industry because "[a]utomobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts." 482 U.S. at 709. Second, it found that the statute's authorizing a warrantless search was necessary to implement the regulatory scheme. allowing frequent, unannounced inspections. Id., at 710. Finally,

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> vehicle if he deems that such record keeping requirements would serve no substantial value. Upon request of an agent of the commissioner or of any police officer and during his regular and usual business hours, a vehicle dismantler shall produce such records and permit said agent or police officer to examine them and any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises...The failure to produce such records or to permit such inspection on the part of any person required to be registered pursuant to this section as required by this paragraph shall be a class A misdemeanor.

482 U.S. at 694 n.1 (quoting N.W. Veh & Traf.Law §415-a5 (McKinney 1986)).

the Court concluded that the statute provided certainty and regularity sufficient to provide an adequate substitute for a warrant.[6] Id., at 711. In reaching this last conclusion, the Court noted several factors: under the statue the owner of a vehicle dismantling business was informed that inspections would be made on a regular basis; the searching official was allowed no discretion in deciding who to search; and the statute set forth who would conduct the inspection, and placed time, place and scope limitations on the inspections by allowing them to be carried out only during regular and usual business hours. Id., at 711-712.

Although the New York statute and the Cleveland ordinance are by no means identical, we conclude they are close enough in their scope, intent, and purpose for us to rely on Burger as support for finding that this ordinance is not facially

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The Burger opinion references State v. Zinmeister, 27 Ohio App.3d 313 (1985) as an example of a regulatory scheme similar to the one under review in Burger that had been upheld in the face of a constitutional attack. See 485 U.S. at 698 & n.11. In Zinmeister, the same ordinance under attack here was held to pass constitutional muster.

unconstitutional. It is true that the New York statue does provide that any request for documents shall be made "during...regular and usual business hours"; whereas, the Cleveland ordinance provides that inspections "shall be conducted at a time and in a manner so as to minimize any interference with or delay of business operations." We do not consider this difference in approach to be of constitutional significance. Both ordinances seek to minimize interference with legitimate business operations. One can always construct an argument that the language of either enactment might leave room for abuses. For example, under the New York statue, if the inspecting agent should choose the busiest time of the day to make the inspection, this might be construed as a harassing technique. Although the Cleveland ordinance tries to avoid this problem of business interruption, one could argue that the inspectors might come in the middle of the night.[7] We conclude

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[7] Indeed, plaintiffs' counsel did make this contention at oral argument. However, the ordinance does not provide for any type of forcible entry and if the inspection occurred when the business was closed, there simply would be nothing to inspect.

that such arguments are better addressed in a case in which the argument is advanced that the ordinance is being enforced in an unconstitutional manner.

Although there is little doubt that the ordinance could be improved upon by narrowing its scope and providing further time, place, and scope restrictions, we do not find the ordinance as written to be facially unconstitutional.

The decision of the district court upholding the constitutionality of the ordinance is **AFFIRMED.**

APPENDIX B

Case No: 94-3088

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

O R D E R

TERM AUTO SALES, INC.; E.K.P., INC., doing business as Brooklyn Salvage; ERNEST BOZIKIS; KERIAKOS BOZIKIS

Plaintiffs - Appellants

v.

CITY OF CLEVELAND

Defendant - Appellee

BEFORE: KEITH, MARTIN, and GUY, Circuit Judges.

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition be, and it hereby is, **DENIED.**

ENTERED BY ORDER OF THE COURT

/s/

Leonard Green, Clerk

Filed June 12, 1995, Leonard Green, Clerk

APPENDIX C

U.S. Constitution, Amendment IV: The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, an no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution, Amendment XIV, Section I: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No states shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property with due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

28 U.S.C. §1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

42 U.S.C. §1983: Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Acto of Congress applicable exclusively to the District of

Columbia shall be considered to be a statute of the District of Columbia.

Codified Ordinance of the City of Cleveland, §601.15:

(a) For the purpose of locating stolen motor vehicles and/or stolen motor vehicle parts, the Chief of Police or his authorized representative may inspect any motor vehicle, as defined in Section 4501.01 of the Revised Code and may inspect any motor vehicle part that has been marked with an identifying number by the manufacturer, situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment, and may inspect the title, registration, vehicle identification number, or license plates of the vehicle in order to establish the rightful ownership or possession of the vehicle or vehicle part.

(b) For the purpose of locating a stolen vehicle, the Chief of Police, or his authorized representative, may inspect implements of husbandry and construction equipment in places described in division (a) of this section.

(c) Whenever possible, inspections conducted pursuant to division (a) or (b) of this section shall be conducted at a time and in a manner so as to minimize any interference with, or delay of business operations.

(d) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance of a police officer from inspecting any place described in division (a), shall do any act which hampers or impedes a police officer from making an inspection pursuant to this Section. Whoever violates this Section is guilty of obstructing vehicle inspections, a misdemeanor of the second degree.

Supreme Court, U.S.
FILED
FEB 14 1996
CLERK

No. 95-948

In The

Supreme Court of the United States

October Term, 1995

TERM AUTO SALES, INC., et al.,

Petitioners,

vs.

THE CITY OF CLEVELAND, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly held that the warrantless search of a business engaged in selling used cars and salvaging wrecked or otherwise inoperable cars, conducted pursuant to a city ordinance authorizing such inspections, was a permissible administrative inspection of a closely regulated business under *New York v. Burger,* 482 U.S. 691 (1987)?

LIST OF PARTIES

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, respondents hereby incorporate by reference the list of parties set forth on page ii of the Petition for a Writ of Certiorari as an accurate statement of the parties and any applicable corporate relations.

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STATEMENT OF JURISDICTION

Petitioners challenged the constitutionality of § 601.15 of the codified ordinances of the City of Cleveland which authorized inspections at certain enumerated business premises for the purpose of locating stolen motor vehicles and motor vehicle parts.

On May 18, 1995, the United States Court of Appeals for the Sixth Circuit upheld § 601.15 against the petitioners' facial challenge.

On July 12, 1995, the Court of Appeals denied the petition for rehearing.

Petitioners invoke this Court's jurisdiction and seek a writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioners sold used cars and salvaged parts from wrecked and otherwise inoperable cars from the same business address.

On July 21, 1986, members of the auto theft unit of the Cleveland police department made an unannounced administrative inspection of the petitioners' business premises to determine whether there were any stolen motor vehicles or motor vehicle parts on the premises. The inspection was conducted pursuant to § 601.15 of the codified ordinances of the City of Cleveland. Several vehicles and vehicle parts were seized as suspected stolen vehicles. A grand jury in Cuyahoga County, Ohio, returned a twenty-one (21) count indictment against the

petitioners, but the charges were later dismissed on motion of the prosecutor for Cuyahoga County.

Subsequently, on July 17, 1987, petitioners brought this action in the United States District Court for the Northern District of Ohio, pursuant to 28 U.S.C. §§ 1331 and 1343(3) and 42 U.S.C. § 1983, against the City of Cleveland, former chief of police Howard Rudolph, and several individual Cleveland police officers. Petitioners challenged the constitutionality of Cleveland codified ordinance § 601.15 which authorized the inspection of motor vehicles and motor vehicle parts at petitioners' business premises. Petitioners claimed that the search and seizure by the Cleveland police violated their rights under the Fourth Amendment to the United States Constitution.

On July 28, 1992, the district court denied summary judgment to the individual Cleveland police officers who claimed qualified immunity.

On June 28, 1993, the United States Court of Appeals for the Sixth Circuit reversed the district court's ruling and held that the individual police officers were entitled to qualified immunity. The court remanded the matter for further proceedings as to the remaining defendants, respondents City of Cleveland and Howard Rudolph.

Following remand, the district court granted summary judgment to the respondents on August 10, 1993. Petitioners requested relief from that judgment pursuant to Fed. R. Civ. P. 60(b), but the district court denied petitioners' motion on December 14, 1993.

Petitioners appealed to the Sixth Circuit Court of Appeals. On May 18, 1995, the court of appeals affirmed the district court's judgment and held that Cleveland codified ordinance § 601.15 was not unconstitutional in violation of the Fourth Amendment.

The court of appeals denied the petitioners' request for rehearing on July 12, 1995.

ARGUMENT

The petition for a writ of certiorari should be denied because the court of appeals correctly analyzed Cleveland codified ordinance § 601.15 in accordance with the standards established in *New York v. Burger,* 482 U.S. 691 (1987). Nothing in the petition suggests that the court of appeals' decision in this case conflicts with a decision of this Court or with the decision of another court of appeals or state court of last resort. Similarly, nothing in the petition indicates that the court of appeals departed in any way from the accepted and usual course of judicial proceedings. Because the court of appeals properly applied the standards set forth in *New York v. Burger* to Cleveland's vehicle inspection ordinance, there is no reason for this Court to revisit the issue presented by this case. Accordingly, the petition should be denied.

In *New York v. Burger,* the Court held that a warrantless search of an automobile junk yard pursuant to a statute authorizing such a search fell within the exception to the warrant requirement for administrative inspections of closely regulated businesses and therefore did not

violate the Fourth Amendment.[1] Because owners and operators of such closely regulated businesses have a reduced expectation of privacy, a warrantless inspection of such commercial premises will be deemed reasonable so long as three criteria are met:

> First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made. . . . Second, the warrantless inspections must be "necessary to further [the] regulatory scheme." . . . Finally, "the statute's inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant."

New York v. Burger, 482 U.S. at 702-703 (quoting *Donovan v. Dewey*, 452 U.S. 594 (1981)).

With regard to the last requirement, the regulatory statute must perform the two basic functions of a warrant. First, it must be sufficiently comprehensive and defined so that the owner of commercial property cannot help but be aware that the property will be subject to periodic inspections undertaken for specific purposes and that the search is being made pursuant to the law.

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[1] The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

New York v. Burger, 482 U.S. at 703. Additionally, the discretion of the inspecting officers must be carefully limited in time, place and scope. *Id.*

The *Burger* court found that there was a substantial government interest in close regulation of the vehicle-dismantling and automobile-junkyard industry because of the extent of motor vehicle theft that is associated with this industry. *Id.*, 482 U.S. at 708-709. The Court further determined that warrantless administrative inspections of such premises were necessary to serve the substantial interest in eradicating automobile theft. *Id.* at 709-710.

Finally, the *Burger* court ruled that the regulatory statute provided a constitutionally adequate substitute for a warrant. *Id.*, 482 U.S. at 711-712. The statute sufficiently informed the operator of a vehicle dismantling business that regular inspections would occur pursuant to the statute. The statute identified who was authorized to conduct the inspection and limited the scope of the inspection so the business operator had notice as to how to comply with the statute. And the inspection was limited as to time, place and scope in that the inspections of vehicle-dismantling and related industries could occur only during regular and usual business hours and the items to be inspected were narrowly defined to include records, vehicles, or vehicle parts that were on the premises and that were subject to the law's requirements.

Accordingly, a warrantless search conducted pursuant to such a regulatory statute fell within the exception to the warrant requirement for administrative inspections of "closely regulated" businesses and did not violate the Fourth Amendment.

In the instant case, the petitioners have not disputed that Cleveland codified ordinance § 601.15 was predicated on the substantial government interest of detecting motor vehicle theft. The petitioners conceded below that they were engaged in a closely regulated business. The petitioners likewise have not challenged that warrantless inspections are necessary to further this regulatory scheme.

The petitioners' only apparent disagreement here is with the court of appeals' conclusion that § 601.15 provided a constitutionally adequate substitute for a warrant in a manner consistent with that upheld in *New York v. Burger*. But a review of § 601.15, the full text of which is set forth at App. 17-18, vindicates the court of appeals' determination that Cleveland's vehicle inspection ordinance meets the standard announced in *New York v. Burger*.

Cleveland's ordinance expressly states that the purpose of the inspections is "to establish the rightful ownership or possession of the vehicle or vehicle part" that is subject to such inspections. § 601.15(a).

The ordinance specifies that the only persons authorized to make such inspections are the chief of police or an authorized representative of the chief of police. § 601.15(a),(b).

The ordinance further specifies that the items subject to inspection are: (1) any motor vehicle, as defined in Section 4501.01 of the Ohio Revised Code; (2) any motor vehicle part that has been marked with an identifying number by the manufacturer; and (3) the title, registration, vehicle identification number, or license plates of such vehicle. § 601.15(a). Inspections may also be made of

any implements of husbandry and construction equipment. § 601.15(b).

The items subject to inspection are limited to those items that are "situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment." § 601.15(a).

The ordinance further provides that whenever possible, such inspections "shall be conducted at a time and in a manner so as to minimize any interference with, or delay of business operations." § 601.15(c).

In short, Cleveland's inspection ordinance identifies the who, what, when, where and why for limited motor vehicle inspections. Any discretion is sufficiently curtailed by the ordinance's limitations as to time, place and scope.

Under these circumstances, there is no basis to conclude that a business like these petitioners could be unaware that motor vehicles and motor vehicle parts on their business premises would be subject to inspection pursuant to § 601.15. Because it was conceded in the lower court that petitioners were engaged in a "closely regulated business," the court of appeals properly determined that petitioners lacked legal standing to complain that the ordinance could conceivably be enforced against other than closely regulated businesses.

Petitioners make no claim that this ordinance was applied to them in an unconstitutional manner. Under

these circumstances, the court of appeals correctly concluded that Cleveland's ordinance regulating this closely regulated business was sufficiently comprehensive and defined to be a constitutionally adequate substitute for a warrant.

While the petitioners insist that Cleveland's ordinance is constitutionally flawed because it does not specify the frequency or regularity of such inspections, the deterrent value of the inspections would be largely negated absent some element of surprise. In *New York v. Burger,* this Court observed:

> Because stolen cars and parts often pass quickly through an automobile junk yard, "frequent" and "unannounced" inspections are necessary in order to detect them. In sum, surprise is crucial if the regulatory scheme aimed at remedying this major social problem is to function at all.

Id., 482 U.S. at 710. See also *United States v. Biswell,* 406 U.S. 311, 316 (1972) ("[I]f inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential.").

As the court of appeals found, Cleveland's ordinance in this case was "close enough in . . . scope, intent, and purpose" to the statute upheld in *New York v. Burger* to withstand the petitioners' facial challenge.

Moreover, the petitioners provide no grounds for this Court to grant certiorari in this case. The court of appeals applied the law of *New York v. Burger* and petitioners have made no showing that the lower court's constitutional analysis was demonstrably flawed or is in conflict with

any other decision. Even if this case were marginally distinguishable from *New York v. Burger* due to slightly different statutory provisions, any distinction would not be of such constitutional magnitude that demands further review by this Court, much less that should lead to a different result. *New York v. Burger* remains determinative under these circumstances and nothing about the instant case provides any reason to re-examine the issue again.

Accordingly, the petition for a writ of certiorari should be denied.

CONCLUSION

For the reasons stated, Respondents City of Cleveland and Howard Rudolph respectfully request that the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B

28 United States Code Section 1254:

§ 1254. Courts of appeals; certiorari, certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 United States Code Section 1331:

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 United States Code Section 1343:

§ 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section –

(1) The District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to

be a statute of the District of Columbia.

42 United States Code Section 1983:

§ 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX C

Ohio Revised Code

§ 4501.01 Definitions

As used in this chapter and Chapters 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, and in the penal laws, except as otherwise provided:

(A) "Vehicles" means everything on wheels or runners, including motorized bicycles, but does not mean vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions.

(B) "Motor vehicle" means any vehicle, including manufactured homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires, except motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour or less, threshing machinery, hay-baling machinery, corn sheller, hammermill and agricultural tractors,

machinery used in the production of horticultural, agricultural, and vegetable products, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

(C) "Agricultural tractor" and "traction engine" mean any self-propelling vehicle that is designed or used for drawing other vehicles or wheeled machinery, but has no provisions for carrying loads independently of such other vehicles, and that is used principally for agricultural purposes.

(D) "Commercial tractor," except as defined in division (C) of this section, means any motor vehicle that has motive power and either is designed or used for drawing other motor vehicles, or is designed or used for drawing another motor vehicle while carrying a portion of the other motor vehicle or its load, or both.

(E) "Passenger car" means any motor vehicle that is designed and used for carrying not more than nine persons and includes any motor vehicle that is designed and used for carrying not more than fifteen persons in a ridesharing arrangement.

(F) "Collector's vehicle" means any motor vehicle or agricultural tractor or traction engine that is of special interest, that has a fair market value of one hundred dollars or more, whether operable or not, and that is owned, operated, collected, preserved, restored, maintained, or used essentially as a collector's item, leisure pursuit, or investment, but not as the owner's principal

means of transportation. "Licensed collector's vehicle" means a collector's vehicle, other than an agricultural tractor or traction engine, that displays current, valid license tags issued under section 4503.45 of the Revised Code, or a similar type of motor vehicle that displays current, valid license tags issued under substantially equivalent provisions in the laws of other states.

(G) "Historical motor vehicle" means any motor vehicle that is over twenty-five years old and is owned solely as a collector's item and for participation in club activities, exhibitions, tours, parades, and similar uses, but that in no event is used for general transportation.

(H) "Noncommercial motor vehicle" means any motor vehicle, including a farm truck as defined in section 4503.04 of the Revised Code, that is designed by the manufacturer to carry a load of no more than one ton and is used exclusively for purposes other than engaging in business for profit.

(I) "Motor bus" means any motor vehicle that has motor power and is designed and used for carrying more than nine passengers, except any motor vehicle that is designed and used for carrying not more than fifteen passengers in a ridesharing arrangement.

(J) "Commercial car" means any motor vehicle that has motor power and is designed and used for carrying merchandise or freight, or that is used as a commercial tractor.

(K) "Bicycle" means every device, other than a tricycle that is designed solely for use as a play vehicle by a child, that is propelled solely by human power upon

which any person may ride, and that has either two tandem wheels, or one wheel in front and two wheels in the rear, any of which is more than fourteen inches in diameter.

(L) "Motorized bicycle" means any vehicle that has either two tandem wheels or one wheel in the front and two wheels in the rear, that is capable of being pedaled, and that its equipped with a helper motor of not more than fifty cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty miles per hour on a level surface.

(M) "Trailer" means any vehicle without motive power that is designed or used for carrying property or persons wholly on its own structure and for being drawn by a motor vehicle, and includes any such vehicle that is formed by or operated as a combination of a semitrailer and a vehicle of the dolly type such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed greater than twenty-five miles per hour, and a vehicle that is designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of more than ten miles or at a speed of more than twenty-five miles per hour. "Trailer" does not include a manufactured home or travel trailer.

(N) "Noncommercial trailer" means any trailer, except a travel trailer or trailer that is used to transport a

boat as described in division (B) of this section, but, where applicable, includes a vehicle that is used to transport a boat as described in division (M) of this section, that has a gross weight of no more than three thousand pounds, and that is used exclusively for purposes other than engaging in business for a profit.

(O) "Manufactured home" means any nonself-propelled vehicle transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. Calculations used to determine the number of square feet in a structure are based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows.

(P) "Semitrailer" means any vehicle of the trailer type that does not have motive power and is so designed or used with another and separate motor vehicle that in operation a part of its own weight or that of its load, or both, rests upon and is carried by the other vehicle furnishing the motive power for propelling itself and the vehicle referred to in this division, and includes, for the purpose only of registration and taxation under those chapters, any vehicle of the dolly type, such as a trailer

dolly, that is designed or used for the conversion of a semitrailer into a trailer.

(Q) "Recreational vehicle" means a vehicular portable structure that is designed and constructed to be used as a temporary dwelling for travel, recreational, and vacation uses and is classed as follows:

(1) "Travel trailer" means a nonself-propelled recreational vehicle that does not exceed an overall length of thirty-five feet, exclusive of bumper and tongue or coupling, and includes a tent-type fold-out camping trailer as defined in section 4517.01 of the Revised Code.

(2) "Motor home" means a self-propelled recreational vehicle that is constructed with permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping.

(3) "Truck camper" means a nonself-propelled recreational vehicle that does not have wheels for road use and is designed to be placed upon and attached to a motor vehicle. "Truck camper" does not include truck covers that consist of walls and a roof, but do not have floors and facilities enabling them to be used as a dwelling.

(4) "Fifth wheel trailer" means a vehicle that is of such size and weight as to be movable without a special highway permit, that has a gross trailer area of four hundred square feet or less, that is constructed with a raised forward section that allows a bi-level floor plan, and that is designed to be towed by a vehicle equipped with a fifth-wheel hitch ordinarily installed in the bed of a truck.

(5) "Park trailer" means a vehicle that is commonly known as a park model recreational vehicle, meets the American national standard institute standard A119.5 (1988) for park trailers, is built on a single chassis, has a gross trailer area of four hundred square feet or less when set up, is designed for seasonal or temporary living quarters, and may be connected to utilities necessary for the operation of installed features and appliances.

(R) "Pneumatic tires" means tires of rubber and fabric or tires of similar material, that are inflated with air.

(S) "Solid tires" means tires of rubber or similar elastic material that are not dependent upon confined air for support of the load.

(T) "Solid tire vehicle" means any vehicle that is equipped with two or more solid tires.

(U) "Farm machinery" means all machines and tools that are used in the production, harvesting, and care of farm products, and includes trailers that are used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of twenty-five miles per hour or less.

(V) "Owner" includes any person, firm, or corporation other than a manufacturer or dealer that has title to a motor vehicle, except that in sections 4505.01 to 4505.19 of the Revised Code, "owner" includes in addition manufacturers and dealers.

(W) "Manufacturer" and "dealer" include all persons, firms, and corporations that are regularly engaged

in the business of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles, at an established place of business that is used exclusively for the purpose of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles. A place of business that is used for manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles shall be deemed to be used exclusively for those purposes even though snowmobiles or all-purpose vehicles are sold or displayed for sale thereat, even though farm machinery is sold or displayed for sale thereat, or even though repair, accessory, gasoline and oil, storage, parts, service, or paint departments are maintained thereat, or, in any county having a population of less than seventy-five thousand persons at the last federal census, even though a department in a place of business is used to dismantle salvage, or rebuild motor vehicles by means of used parts, if such departments are operated for the purpose of furthering and assisting in the business of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles. Places of business or departments in a place of business used to dismantle, salvage, or rebuild motor vehicles by means of using used parts are not considered as being maintained for the purpose of assisting or furthering the manufacturing, selling, displaying, and offering for sale or dealing in motor vehicles.

(X) "Operator" includes any person who drives or operates a motor vehicle upon the public highways.

(Y) "Chauffeur" means any operator who operates a motor vehicle, other than a taxicab, as an employee for hire; or any operator whether or not the owner of a motor vehicle, other than a taxicab, who operates such vehicle

for transporting, for gain, compensation, or profit, either persons or property owned by another. Any operator of a motor vehicle who is voluntarily involved in a ridesharing arrangement is not considered an employee for hire or operating such vehicle for gain, compensation, or profit.

(Z) "State" includes the territories and federal districts of the United States and the provinces of Canada.

(AA) "Public roads and highways" for vehicles includes all public thoroughfares, bridges, and culverts.

(BB) "Manufacturer's number" means the manufacturer's original serial number that is affixed to or imprinted upon the chassis or other part of the motor vehicle.

(CC) "Motor number" means the manufacturer's original number that is affixed to or imprinted upon the engine or motor of the vehicle.

(DD) "Bill of sale" means the written statement or document of transfer or conveyance required prior to January 1, 1938, to be executed and delivered by the corporation, partnership, association, or person selling, giving away, transferring, or passing title to a motor vehicle.

(EE) "Distributor" means any person who is authorized by a motor vehicle manufacturer to distribute new motor vehicles to licensed motor vehicle dealers at an established place of business that is used exclusively for the purpose of distributing new motor vehicles to

licensed motor vehicle dealers, except when the distributor also is a new motor vehicle dealer, in which case he may distribute at the location of his licensed dealership.

(FF) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver and includes ridesharing arrangements known as carpools, vanpools, and buspools.

(GG) "Apportionable vehicle" means any vehicle that is used or intended for use in two or more international registration plan member jurisdictions that allocate or proportionally register vehicles, that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and that meets any of the following qualifications:

(1) Is a power unit having a gross vehicle weight in excess of twenty-six thousand pounds;

(2) Is a power unit having three or more axles, regardless of the gross vehicle weight;

(3) Is a combination vehicle with a gross vehicle weight in excess of twenty-six thousand pounds.

"Apportionable vehicle" does not include recreational vehicles, vehicles displaying restricted plates, city pick-up and delivery vehicles, buses used for the transportation of chartered parties, or vehicles owned and operated by the United States, this state, or any political subdivisions thereof.

(HH) "Chartered party" means a group of persons who contract as a group to acquire the exclusive use of a passenger-carrying motor vehicle at a fixed charge for the

vehicle in accordance with the carrier's tariff, lawfully on file with the interstate commerce commission, for the purpose of group travel to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

(II) "International registration plan" means a reciprocal agreement of member jurisdictions that is endorsed by the American association of motor vehicle administrators, and that promotes and encourages the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles and recognizing registration of vehicles apportioned in member jurisdictions.

(JJ) "Restricted plate" means a license plate that has a restriction of time, geographic area, mileage, or commodity, and includes license plates issued to farm trucks under division (K) of section 4503.04 of the Revised Code.

(KK) "Gross vehicle weight," with regard to any commercial car, trailer, semitrailer, or bus that is taxed at the rates established under section 4503.042 of the Revised Code, means the unladen weight of the vehicle fully equipped plus the maximum weight of the load to be carried on the vehicle.

(LL) "Combined gross vehicle weight" with regard to any combination of a commercial car, trailer, and semitrailer, that is taxed at the rates established under section 4503.042 of the Revised Code, means the total unladen weight of the combination of vehicles fully equipped plus the maximum weight of the load to be carried on that combination of vehicles.

(MM) "Chauffeured limousine" means a motor vehicle that is designed to carry fewer than nine passengers and is operated for hire on an hourly basis pursuant to a prearranged contract for the transportation of passengers on public roads and highways along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip. "Chauffeured limousine" does not include any vehicle that is used exclusively in the business of funeral directing.

APPENDIX D

Cleveland Codified Ordinance Section 601.15:

Section 601.15 Inspection of Vehicles for the Purpose of Locating Stolen Motor Vehicles and/or Stolen Parts

(a) For the purpose of locating stolen motor vehicles and/or stolen motor vehicle parts, the Chief of Police, or his authorized representative, may inspect any motor vehicle, as defined in Section 4501.01 of the Revised Code and may inspect any motor vehicle part that has been marked with an identifying number by the manufacturer, situated in the City of Cleveland in any public garage, community garage, storage garage, service garage, repair shop, parking lot, auto sales lot, vehicle leasing or rental lot, motor vehicle salvage facility, scrap metal processing facility, auto wrecking yard, junk yard, or other similar establishment, and may inspect the title, registration, vehicle identification number, or license plates of the vehicle in order to establish the rightful ownership or possession of the vehicle or vehicle part.

(b) For the purpose of locating a stolen vehicle, the Chief of Police, or his authorized representative, may inspect implements of husbandry and construction equipment in places described in division (a) of this section.

(c) Whenever possible, inspections conducted pursuant to division (a) or (b) of this section shall be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations.

(d) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance of a police officer from inspecting any place described in division (a), shall do any act which hampers or impedes a police officer from making an inspection pursuant to this Section.

Whoever violates this Section is guilty of obstructing vehicle inspections, a misdemeanor of the second degree.

(Ord. No. 137-86. Passed 1-13-86, eff. 1-16-86)